IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WA.No. 137 of 2007

AGAINST THE JUDGEMENT IN WPC.16862/2006 Dated 20/12/2006
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APPELLANT: PETITIONER:

JAYACHANDRAN V.P., S/O.C.N.PRABHAKARAN,
VAVOLIL HOUSE, PAZHAVANGADY P.O., RANNI-689 673.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.T.R.SADEESAN
SMT.DHANYA CHANDRAN

RESPONDENTS: RESPONDENTS:
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1. MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, KOTTAYAM,
REP. BY ITS REGISTRAR.

2. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS,
KOTTAYAM.

3. DR.M.S.JISHA,
MALAYIL PUTHENVEEDU, 101 KAVALA,
ATHIRAMPUZHA P.O., KOTTAYAM.

BY SRI. V.A.MUHAMMED, SC FOR M.G.UNIVERSITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.A.ABDUL GAFOOR
&
K.R.UDAYABHANU, JJ

W.A. No.137 of 2007

Dated this the 6th day of February, 2007

JUDGMENT

ABDUL GAFOOR, J

The learned single judge by the impugned judgment did not accept the contention, to apply Ext. P4 amendment to the general rules in K.S. & S.S.R for recruitment to the vacancy notified in Ext. P1. Therefore, this Writ Appeal.

2. The Mahatma Gandhi University issued Ext.P1 notification on 19.12.2005 for appointment to the post of reader in Microbiology. The appellant and others including the third respondent responded to the notification. It was specified in Ext. P1 that the vacancy in question was reserved for a candidate belonging to Ezhava community and that only in the absence of candidates belonging to that community, those belonging to other community would be considered. During the process of selection and before the finalisation, the General Rules in KS & SSR were amended as per Ext. P4 notification to the following

effect :-

> "15(a) The integrated cycle combining the rotation in clause (c) of rule 14 and the sub rotation in sub rule (2) of rule 17 shall be as specified in the Annexure to the Part. Notwithstanding anything contained in any other provisions of these rules or in the special rules if a suitable candidate is not available for selection from any particular community or group of communities specified in the Annexure, such vacancy shall be unfilled, notified separately for that community or group of communities for that selection year and shall be filled by direct recruitment exclusively from among that community or group of communities. If after re-notification, repeatedly for not less than two times, no suitable candidate is available for selection from the respective community or group of communities, the selection shall be made from available Other Backward Classes candidates. In the absence of Other Backward Classes candidates, the selection shall be made from available scheduled Castes candidates and in their absence, the selection shall be made from available Scheduled Tribes candidates." (emphasis supplied.)

3. It is contended by the appellant/writ petitioner that

the third respondent does not belong to Ezhava Community. Therefore, in the wake of Ext. P4 amendment, he should not have been considered for selection. It is also submitted that the appellant himself had applied pursuant to Ext. P1 notification. The appellant is admittedly a candidate belonging to Ezhava community. If he had applied to the post pursuant to Ext. P1 notification there is no question of application of Ext. P4 amendment, because, if appellant is qualified, he shall have to be appointed. He is relying on Ext. P4, obviously because he is not qualified, as he does not possess a doctoral decree or any equivalent publication work of international standard. Necessarily the situation shall be taken as if there are no qualified candidates belonging to Ezhava community.

4. The situation of re-notifying the vacancy in terms of the amendment to the Rules as extracted above, arises when a candidate belonging to the reserved community is not available during the selection year concerned. The notification was in the year 2005. Ext. P4 amendment was brought on the statute book on 8.3.2006 retrospectively from 2.2.2006. It does not have retrospectivity covering the period of the notification Ext. P1

dated 19.12.2005. Necessarily, the process of selection for the vacancy notified in the year 2005 shall have to be governed by the terms and conditions mentioned in the notification itself and the Rules in force on the date of the notification.

5. The learned single judge, relying on the decision in Secretary A.P. Public Service Commission v. V.B. Swapna [(2005) 4 SCC 154] held that amended rules regarding qualification for appointment shall be applied, either expressly or by implication, if such amendment are made with retrospective effect stretching to the date of notification for recruitment. In this case admittedly Ext. P4 does not have retrospectivity covering the date of Ext. P1 notification. Therefore, Ext. P4 cannot be pressed into service for this recruitment in question.

6. The contention of the appellant/writ petitioner is that as he belongs to Ezhava community, consideration of any candidate belonging to a community other than Ezhava, arises only after weeding out him from consideration. The University had not made it clear that such consideration and weeding out was on any date prior to the date of the retrospectivity given to Ext. P4. If that process was later than the said date, necessarily

Ext. P4 will apply, he submits.

7. We are unable to accept this contention because the appellant is not a qualified candidate at all. So, no question of weeding him out arises. He is an eligible hand. His consideration does not arise at all. Merely because a person who is not eligible to apply, has submitted an application, it does not require consideration.

8. So even going by the contention of the appellant himself, a situation of Ext. P4 being applied to the selection in question does not arise at all. Further Ext. P1 itself contains a clause of dereservation.

Writ Appeal is therefore dismissed.

K.A.ABDUL GAFOOR, J

K.R.UDAYABHANU, J

csl

(2005 (5) SCC 396 **)**